

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No.: EB-09-SE-209
)	
RF Linx Corporation)	Acct. No.: 201132100012
)	
)	FRN: 0020374724

ORDER

Adopted: December 7, 2010**Released:** December 8, 2010

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and RF Linx Corporation (“RF Linx”). The Consent Decree terminates an investigation by the Bureau against RF Linx for possible violations of section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and sections 2.803(a), 2.925, and 15.204(d)(1), (2) of the Commission’s rules (“Rules”),² regarding RF Linx’s marketing of external radio frequency power amplifiers.

2. The Bureau and RF Linx have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether RF Linx possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Act,³ and sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a), 2.925, 15.204(d)(1), (2).

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that all third-party complaints against RF Linx before the Bureau related to the above-captioned investigation as of the date of this Consent Decree **ARE DISMISSED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to counsel for RF Linx, Michelle W. Cohen, Esq., Thompson Hine LLP, 1920 N Street, NW, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau and RF Linx Corporation by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's Investigation into whether RF Linx violated section 302(b) of the Communications Act of 1934, as amended,¹ and sections 2.803(a), 2.925, and 15.204(d)(1), (2) of the Commission's rules,² regarding the marketing of external radio frequency power amplifiers ("amplifiers") for individual sale.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Complaint" means a third-party complaint that may have been received by, or is in the possession of, the Commission alleging violations of section 302(b) of the Act and sections 2.803(a), 2.925, and 15.204(d)(1), (2) of the Rules.
 - (f) "Compliance Plan" means the program described in this Consent Decree at paragraph 8.
 - (g) "Effective Date" means the date on which the Bureau releases the Adopting Order.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a), 2.925, 15.204(d)(1), (2).

- (h) “Investigation” means the investigation commenced by the Bureau’s October 30, 2009 letter of inquiry³ regarding RF Linx’s marketing of external radio frequency power amplifiers.
- (i) “Parties” means RF Linx and the Bureau, and each a “Party”.
- (j) “RF Linx” means RF Linx Corporation and its predecessors-in-interest and successors-in-interest.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to section 302(b) of the Act⁴ and section 2.803(a) of the Rules,⁵ radio frequency devices may not be marketed⁶ in the United States unless such devices comply with the applicable technical and administrative provisions of the Rules. Section 15.204(d)(1) of the Rules provides that an external radio frequency power amplifier intended for use with a Part 15 intentional radiator may only be marketed for individual sale where the external radio frequency power amplifier is of a design such that it can only be connected as part of a system in which it has been previously authorized.⁷ Section 15.204(d)(2) of the Rules provides that the outside packaging and user manual for external radio frequency power amplifiers marketed for individual sale in accordance with Section 15.204(d)(1) must include notification that the amplifier can be used only in a system in which it has obtained authorization and that such notification must identify the authorized system by FCC Identifier.⁸ External radio frequency power amplifiers must also comply with all applicable identification and labeling requirements prior to marketing.⁹

3. On October 30, 2009, the Bureau’s Spectrum Enforcement Division issued a LOI to RF Linx.¹⁰ The LOI directed RF Linx, among other things, to submit a sworn written response to a series of questions relating to whether RF Linx was marketing unauthorized and non-compliant external radio frequency power amplifiers, including for individual sale in contravention of the Rules. RF Linx responded to the LOI on December 18, 2009.¹¹

³ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Joe Janning, President, RF Linx (October 30, 2009) (“LOI”).

⁴ 47 U.S.C. § 302a(b).

⁵ 47 C.F.R. § 2.803(a).

⁶ Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

⁷ 47 C.F.R. § 15.204(d)(1).

⁸ 47 C.F.R. § 15.204(d)(2).

⁹ See 47 C.F.R. § 2.925. The Rules provide for certain exceptions to the aforementioned requirements, allowing amplifiers to be marketed and sold in certain limited instances to manufacturers and wholesalers, for export, or for use by the Government of the United States. See 47 C.F.R. §§ 2.803(b), 2.803(d), 2.807(b), 2.807(d).

¹⁰ See *supra* n.3.

¹¹ See Letter from Michelle W. Cohen, Esq., Thompson Hine LLP, counsel for RF Linx, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec. 18, 2009) (“LOI Response”).

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

5. **Jurisdiction.** RF Linx agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation and dismiss the Complaint. In consideration for the termination of the Investigation and dismissal of the Complaint, RF Linx agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against RF Linx concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against RF Linx with respect to RF Linx's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission authorizations.

8. **Compliance Plan.** In response to the Bureau's Investigation, RF Linx initiated certain remedial measures in addition to its ongoing compliance efforts and, for purposes of settling the matters herein, agrees to implement, within thirty (30) days of the Effective Date, a Compliance Plan related to future compliance with the Act, the Rules, and the Commission's Orders. The Compliance Plan will include, but will not be limited to, the following components:

(a) **Compliance Officer.** Within thirty (30) days of the Effective Date, RF Linx will designate a Compliance Officer who will be responsible for administering the Compliance Plan.

(b) **Training.** Within sixty (60) days of the Effective Date, RF Linx will provide training regarding the authorization and marketing of external radio frequency power amplifiers under the Rules and the requirements of the Consent Decree to all of its employees who are involved directly or indirectly in the marketing of amplifiers by RF Linx. Further, within thirty (30) days of hire, RF Linx will similarly provide training to all new employees involved directly or indirectly in the marketing of amplifiers sold by RF Linx.

(d) **Compliance Reports.** RF Linx will file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of RF Linx, stating that the Compliance Officer has personal knowledge (i) that RF Linx has

established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, and with sections 2.803(a), 2.925, and 15.204(d)(1), (2) of the Rules, together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) that RF Linx has been utilizing those procedures since the commencement of the Compliance Plan; and (iii) that RF Linx is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of RF Linx, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, and (ii) the steps that RF Linx has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Kevin M. Pittman at Kevin.Pittman@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

(e) **Termination Date.** Unless stated otherwise, the requirements of this paragraph 8 of the Consent Decree will expire twenty-four (24) months from the Effective Date.

9. **Voluntary Contribution.** RF Linx agrees that it will make a voluntary contribution to the United States Treasury in the amount of seven thousand five hundred dollars (\$7,500). The payment will be made within thirty (30) days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). RF Linx shall also send electronic notification to Kevin M. Pittman at Kevin.Pittman@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov on the date said payment is made.

10. **Waivers.** RF Linx waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. RF Linx shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither RF Linx nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and RF Linx shall waive any statutory right to a trial *de novo*. RF Linx hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

11. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which RF Linx does not expressly consent) that provision will be superseded by such Commission rule or Order.

13. **Successors and Assigns.** RF Linx agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Counterparts**. This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief, Enforcement Bureau

Date

Joseph Janning
President
RF Linx Corporation

Date